

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AVOCENT REDMOND CORP., a
Washington corporation,

Plaintiff,

v.

ATEN TECHNOLOGY INC., a California
corporation; ATEN INTERNATIONAL CO.,
LTD., a Taiwanese Company; BELKIN
INTERNATIONAL, INC., a Delaware
corporation, and BELKIN, INC., a Delaware
corporation.

Defendants.

Case No. 2:06-CV-01711 (RSL)

**DECLARATION OF MING-TAO YANG
IN SUPPORT OF DEFENDANTS'
MOTION FOR LEAVE TO AMEND
INVALIDITY CONTENTIONS**

1 I, Ming-Tao Yang, declare as follows:

2 I am an attorney with the law firm of Finnegan, Henderson, Farabow, Garrett & Dunner
3 LLP ("Finnegan") and a member of the bar of the State of California. I am admitted *pro hac vice*
4 before this Court. Finnegan is the lead counsel for Defendants ATEN International Co., Ltd. and
5 ATEN Technology, Inc. I have personal knowledge of the matters set forth in this declaration
6 and if called upon to testify in court, I could and would do so competently.

7 I make this declaration in support of DEFENDANTS' MOTION FOR LEAVE TO
8 AMEND INVALIDITY CONTENTIONS, filed herewith. It is my understanding that each of the
9 prior art references identified in Defendants' motion for leave to amend, and the information
10 regarding their significance, was unavailable to ATEN before the October 30, 2007 stay was
11 entered. These references were developed or identified by others after the stay in this case, in
12 connection with subsequent litigation and reexamination proceedings involving, primarily,
13 Avocent and Rose Electronics. Avocent's lawsuit against Rose in the United States Court of
14 Federal Claims, Case No. 08-69C, which involved all three of the patents asserted in this case
15 against ATEN, as well as the USPTO reexamination proceedings involving all three of these
16 patents, were initiated after the stay in this case was entered.

17 Prior to the stay, ATEN conducted prior art searches, reviewed hundreds of references
18 from the search results and from the prosecution and litigation histories of the asserted patents
19 prior to 2007.

20 1. The prior art review, search, and analysis efforts were a significant undertaking in that:

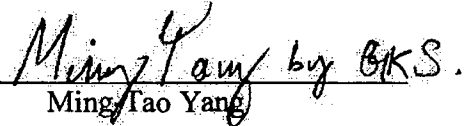
- 21 a. Avocent asserted three patents and over fifty claims against ATEN;
- 22 b. The three patents-in-suit constituted a subset of a larger family of patent
23 applications and patents; therefore, analyzing the file histories and prior art
24 cited in those related applications involved analyzing thousands of pages and
25 hundreds of cited and related prior art references;
- 26 c. At least two of the asserted patents were the subject of prior litigation, making
27 the review of available documents from prior litigation for prior art and for
28 developing invalidity positions necessary and time-consuming;

1 d. ATEN and other defendants initiated prior art searches and reviewed the prior
2 art search results to identify the references identified and formulate the
3 positions set forth in the defendants' preliminary invalidity contentions, which
4 identified 43 references and contained 87 pages of invalidity claim charts.

5 2. Despite ATEN's efforts to locate relevant prior art, ATEN did not become aware of
6 the prior art identified in Defendants' motion for leave to amend, or did not appreciate their
7 significance, until after the case was stayed.

8 3. Prior to the stay, neither Rose nor its attorneys disclosed to me the existence or
9 significance of Rose's prior development efforts relating to the Rose OSD KVM Product that
10 constitutes the 102(g) prior invention defense reflected in the supplemental invalidity contentions.
11

12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct. Executed this 1st day of December, 2011 in Palo Alto, California.

14  by BKS.
15 Ming Tao Yang
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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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